BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT

BILASPUR C.G.

In the Matter of W.P.No. 2168 /2003

PETITIONER

Krishnakant Mishra, aged about 46 yrs Son of Shri Bhaiyalal Mishra, Garden Superintendent Government Nursery and Horticulture Department at Patari, Korba, Distt. Korba (C.G.)

P. R. No. 2018 Presented by Shri Sunita Jain dated 21.07.03

Versus

RESPONDENTS

1) State of Chhattisgarh, through : Principal Secretary, Department of Horticulture and Nursery, Mantralay, D.K.S. Bhawan, Raipur (Chhattisgarh).

2) Collector, Korba (Chhattisgarh).

3) Director, Horticulture and Nursery/Gardening, Mantralay, Raipur (Chhattisgarh)

4) Pariyojana Addhikari, Horticulture and Nursery, Korba, Chhattisgarh.

RECEIVED COPY 21/7 CLERK TO A.G. BILASPUR

PETITION UNDER ARTICLE 226/227 of THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI AND /OR ANY OTHER COMMAND OF LIKE NATURE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(47)

आदेश पत्रक

W.P.No. 2168/03

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5.9.2003

Petitioner by Shri R. Pradhan, Advocate.

State by Shri Sanjay K. Agarwal, Deputy Advocate General.

Heard.

The petitioner has preferred this petition under Article 226/227 of the Constitution of India by which he has challenged the order of the Commissioner, Bilaspur dt. 20/21 March 2002 by which petitioner's one increment has been stopped. The petitioner's case is that at the relevant time he was working as Superintendent, Govt. Nursery and was posted at Korba. He was performing his duties with utmost sincerity and honesty. He was given the additional charge of Pariyojna Adhikari vide order dt. 24.1.2001. The petitioner was also looking after one programme floated by the State as 'Apni Badi Apni Sabji' which was under the supervision of the petitioner and was successfully performed by the petitioner for which he received appreciation from the Chief Minister and Principal Secretary vide Annexure P/2. On 25th January, 2001 the petitioner was required to attend the meeting in the capacity of Pariyojna Adhikari Udyan. In the said meeting some questions were asked from the petitioner in connection with the Indira Hareli Saheli Yojna but he could not reply and on account of that the petitioner was suspended vide order dt. 30th July, 2001 and a notice was issued to the petitioner. The petitioner replied that notice. Thereafter the petitioner was charge-sheeted of which the petitioner submitted point wise reply to the Collector, which is annexure P/7. Even though there was no fault on the part of the petitioner and the petitioner answered all the points

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

raised in the charge-sheet even then the petitioner was held guilty under sub-rule (10) of Rule 11 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (For short 'Rules 1966) and punishment of stoppage of two increments was awarded against which the petitioner preferred an appeal and by the impugned order the Commissioner partly allowed the appeal however maintained the punishment of stoppage of one increment. The said order is violative of principles of natural justice. Even the charges were not proved and the order of the Collector is not based on the evidence. The order is contrary to sub-rule (10) of Rule 11 of the Rules 1966, violative of Principles of Article 311 of the Constitution of India. Therefore the petition may be allowed and the impugned order may be quashed.

I have heard Shri B. Pradhan, counsel for the petitioner and Shri Sanjay K. Agarwal, Deputy Advocate General for the State.

The State has not been able to file return in spite of three adjournments given to the State and on 29th August, 2003 on the request of learned counsel for the State one week's time was allowed as a last opportunity but even today learned Deputy Advocate General is not in a position to file the return.

A perusal of the order of the Collector by which two increments of the petitioner were stopped reveals that the reply of the employee was not satisfactory that is why he imposed a penalty of withholding of two increments in a year under sub-rule (10) of Rule 11 of the Rules, 1966. In this case the charge sheet alongwith memorandum of charges were served upon the petitioner and the reply of the same

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was filed by the petitioner and considering the reply and the material available before the Collector, he passed the order Annexure P/8.

Rule 16 of the Rules 1966 lays down the procedure for imposing minor penalties. Clause (d) of sub-rule (1) of Rule 16 provides for recording a finding on each imputation of misconduct or misbehaviour. While imposing penalty the Collector has not recorded his finding on each of the imputation of misconduct and simply held that the reply of the petitioner is not satisfactory. This order is not in consonance with the requirement of the provisions of clause (d) of sub-rule (1) of Rule 16 of the Rules, 1966. Even the appellate order of the Commissioner Annexure P/1 simply says that the order of punishment is modified and it is reduced from stoppage of two increments to one increment. Even this order also does not meet the requirement of the above provision.

In view of the above, the punishment has not been awarded after following the procedure as envisaged under Rule 16, therefore the order of the Collector and Commissioner are liable to be set aside and quashed.

Therefore, the petition of the petitioner is allowed and the order of the Commissioner Annexure Annexure P/1 and order of Collector Annexure P/8 are quashed. However, the Collector would be at liberty to conduct the enquiry afresh after following the procedure as prescribed under the Rules 1966.

Certified copy, as per Rules.

Sd/-
L.C. Bhadoo
Judge

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